

Office of Personnel Management

§ 353.101

in the same competitive area as the position last held in the former agency. If the reemployment would cause the separation or demotion of another employee, the applicant should be considered an employee for the purpose of applying the reduction-in-force regulations to determine to what, if any, position the employee is entitled. If the employee is not placed at the former grade or level, the agency must extend consideration beyond the competitive area. Responsibility for reemployment is agencywide.

(4) Reemployment may be at a higher grade than that to which the employee is entitled if all appropriate standards and requirements are satisfied and if this will not cause the displacement of another employee.

(5) The reemployment obligation may be satisfied by placement in any position within the agency that is acceptable to the employee.

(d) *Agency refusal to reemploy.* An agency may refuse to reemploy under this section only when the employee was separated from the Commission for serious cause showing unsuitability for reemployment.

§ 352.909 Appeals.

(a) If an agency denies reemployment to an applicant who claims reemployment rights under this subpart, the agency must notify the applicant in writing of that denial and its reasons. In the same notice, the agency will inform the applicant of the right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

(b)(1) When an agency has reemployed or returned an employee, it will advise the employee of the right of appeal if he or she considers the reemployment or return not to be in accordance with the Act and this subpart.

(2) An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude this matter must use the negotiated grievance procedure.

(3) An employee to whom paragraph (b)(2) of this section does not apply is entitled to appeal to the Merit Systems Protection Board under the provisions

of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

PART 353—RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY

Subpart A—General Provisions

Sec.

- 353.101 Scope.
- 353.102 Definitions.
- 353.103 Persons covered.
- 353.104 Notification of rights and obligations.
- 353.105 Maintenance of records.
- 353.106 Personnel actions during employee's absence.
- 353.107 Service credit upon reemployment.
- 353.108 Effect of performance and conduct on restoration rights.
- 353.109 Transfer of function to another agency.
- 353.110 OPM placement assistance.

Subpart B—Uniformed Service

- 353.201 Introduction.
- 353.202 Discrimination and acts of reprisal prohibited.
- 353.203 Length of service.
- 353.204 Notice to employer.
- 353.205 Return to duty and application for reemployment.
- 353.206 Documentation upon return.
- 353.207 Position to which restored.
- 353.208 Use of paid leave during uniformed service.
- 353.209 Retention protections.
- 353.210 Department of Labor assistance to applicants and employees.
- 353.211 Appeal rights.

Subpart C—Compensable Injury

- 353.301 Restoration rights.
- 353.302 Retention protections.
- 353.303 Restoration rights of TAPER employees.
- 353.304 Appeals to the Merit Systems Protection Board.

AUTHORITY: 38 U.S.C. 4301 et. seq., and 5 U.S.C. 8151.

SOURCE: 60 FR 45652, Sept. 1, 1995, unless otherwise noted.

Subpart A—General Provisions

§ 353.101 Scope.

The rights and obligations of employees and agencies in connection with leaves of absence or restoration to duty following uniformed service under 38